

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
National Association of Professional Insurance	)	
Agents Request for Declaratory Ruling	)	

**ORDER**

**Adopted: March 12, 2007****Released: March 13, 2007**

By the Chief, Consumer & Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this Order, we dismiss as untimely a Request for Declaratory Ruling filed by the National Association of Professional Insurance Agents (PIA).<sup>1</sup> PIA seeks a declaratory ruling as to the application of the Commission's Telephone Consumer Protection Act (TCPA)<sup>2</sup> rules to independent insurance agents. Specifically, PIA asks the Commission to reconsider its determination that the established business relationship (EBR) exemption from the do-not-call rules permits independent insurance agents to contact consumers only for a period of 18 months after the placement of the insurance product by the agent. For the reasons set forth below, we dismiss PIA's petition.

**II. BACKGROUND**

2. On July 3, 2003, the Commission revised its TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations.<sup>3</sup> Specifically, the Commission established a national do-not-call registry to be jointly implemented by the Federal Trade Commission (FTC) and this Commission. The Commission received numerous petitions for reconsideration and/or clarification of the telemarketing rules following release of the *2003 TCPA Order*.<sup>4</sup>

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<sup>1</sup> National Association of Professional Insurance Agents Request for Declaratory Ruling, CG Docket No. 02-278, filed July 12, 2005 (*Petition*).

<sup>2</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. *See also* 47 C.F.R. § 64.1200.

<sup>3</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

<sup>4</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788 at 3790, para. 5 (2005) (*Second Order on Reconsideration*); published in the Federal Register at 70 FR 19330 (April 13, 2005).

Petitioners raised issues related to the national do-not-call registry, the company-specific do-not-call rules, the restrictions on prerecorded messages, and rules addressing the use of predictive dialers.<sup>5</sup>

3. On February 18, 2005, the Commission released an order on reconsideration addressing certain issues raised in the petitions for reconsideration of the *2003 TCPA Order*.<sup>6</sup> As relevant here, the American Council of Life Insurers (ACLI) asked the Commission to clarify that an EBR exists: (1) between a person and his or her insurer as long as there is an insurance policy or annuity in force between the company and the person; and (2) between the person and his or her insurance agent, as long as there is an insurance policy or annuity in force that was placed by that insurance agent.<sup>7</sup> ACLI indicated that the definition of “EBR” was vague as applied to the life insurance industry and did not take into account the unique aspects of the relationship between policyholders, insurers, their agents and licensed insurance professionals.<sup>8</sup>

4. In addressing the petitions for reconsideration, the Commission determined that, during the time a financial contract remains in force between a company and a consumer, there exists an EBR, which will permit that company to call the consumer during the period of the “contract.”<sup>9</sup> Once any account is closed or any “contract” has terminated, the bank, lender, or other entity will have an additional 18 months from the last transaction to contact the consumer before the EBR is terminated for purposes of telemarketing calls.<sup>10</sup> In addition, the Commission clarified that intermediaries, such as insurance agents and mortgage brokers, may call those consumers with whom they have arranged an insurance policy or mortgage for a period of 18 months from the time the transaction is completed, *i.e.*, the broker/agent arranged the mortgage or insurance deal.<sup>11</sup> The Commission agreed that brokers and agents often play an important role in these types of financial transactions and that, in many circumstances, the consumer would expect to receive a call from them within a reasonable period of time of the transaction.<sup>12</sup> However, it concluded that to allow a broker to make a telephone solicitation to a consumer for the duration of the loan or term of the policy would conflict with the do-not-call rules’ purpose in protecting consumer privacy rights.<sup>13</sup> In addition, the Commission noted that a broker or agent may obtain the consumer’s express written permission to call beyond the 18-month period at the time of the transaction.<sup>14</sup>

5. On July 12, 2005, PIA filed a Request for Declaratory Ruling asking the Commission to “revisit and reconsider” its determination regarding insurance agents and to clarify that insurance agents, like insurance carriers, may contact policyholders with whom they have an EBR throughout the term of the insurance policy, plus 18 months.<sup>15</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> See *Second Order on Reconsideration*, 20 FCC Rcd 3788 (2005).

<sup>7</sup> See *Id.* at 3797, para. 24.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3797-98, para. 26.

<sup>10</sup> See 47 C.F.R. § 64.1200(f)(4).

<sup>11</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798-99, para. 27.

<sup>12</sup> *Id.*

<sup>13</sup> The Commission noted that, unlike the bank or lender with which a consumer has an ongoing relationship based on an account or loan, the mortgage broker or insurance agent typically is only involved in the original transaction. Thus, once the mortgage is secured or an insurance policy is set up, the broker or agent may only call the consumer during the 18-month period following the original transaction. *Id.* at 3798-99, para. 27, n.77.

<sup>14</sup> *Id.* at 3798-99, para. 27.

<sup>15</sup> See *Petition* at 8.

### III. DISCUSSION

6. Section 405 of the Act<sup>16</sup> requires that petitions for reconsideration of a Commission action must be filed no later than 30 days after the action that is the subject of the appeal. Section 1.106(f) of the Commission's rules, which requires petitions for reconsideration to be filed within 30 days of the date of the public notice of the final order, reflects this statutory mandate.<sup>17</sup> Although PIA characterizes its filing as a request for declaratory ruling, it asks the Commission to revisit its findings regarding the application of the EBR exemption to telemarketing calls by insurance agents. This issue was raised in petitions for reconsideration of the *2003 TCPA Order* and squarely addressed in the Commission's *Second Order on Reconsideration*. PIA raises no new information that would cause us to review this issue again. PIA filed its request almost three months after the *Second Order on Reconsideration* was published in the federal register.<sup>18</sup> Accordingly, we dismiss PIA's request for declaratory ruling as a late-filed petition for reconsideration.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Act, and Section 1.106(f) of the Commission's rules, the Request for Declaratory Ruling filed by National Association of Professional Insurance Agents IS DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.141 and 0.361 of the Commission's Rules, 47 C.F.R. §§ 0.141 and 0.361.

Federal Communications Commission

Catherine W. Seidel  
Chief, Consumer & Governmental Affairs Bureau

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<sup>16</sup> 47 U.S.C. § 405(a).

<sup>17</sup> 47 C.F.R. § 1.106(f).

<sup>18</sup> See 70 FR 19330 (April 13, 2005).